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**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

DR. MORGAN REYNOLDS, on behalf of	:	
The United States of America	:	
	:	
Plaintiff,	:	<u>ECF CASE</u>
vs.	:	
	:	January 30, 2008
SCIENCE APPLICATIONS	:	
INTERNATIONAL CORP., et al	:	07 CIV 4612 (GBD)
	:	
Defendants.	:	

AFFIRMATION IN OPPOSITION TO MOTION FOR JOINDER (Docket #89)

I, JERRY V. LEAPHART, am an attorney at law, duly licensed to practice before this and other courts and am attorney of record and Lead Counsel for plaintiff in the above captioned matter.

This affirmation expresses some opposition to the Motion for Joinder, Docket #89 filed on or about January 27, 2008.

Said motion represents that it is filed without the opposition of plaintiff and that is not fully correct. It is true that in a teleconference with counsel, Patricia B. Gary, Esq., it was represented there would be no opposition to a submittal involving the “first-to-file” bar arising under § 3730(b)(5) of the False Claims Act.

However, it was my distinct understanding that the filing would be different, separate and apart from the manner in which defendant Applied Research Associates Inc (ARA) had expressed that issue, rather than an adoption of the argument of ARA. I hasten to add that this is simply thought to be a misunderstanding and not, by any means, a misrepresentation. I may well have misunderstood; however, I did have the distinct impression that Attorney Gary was fully aware of what might be called the logical flaws of ARA's argument; or, ARA's judicial admissions, as I have described them. Thus, it came as a surprise when, upon examination, the motion for joinder submitted at Docket #89 seeks, instead, to have defendants SGH/CAE join in the expression of the "first to file" bar as submitted by ARA.

As a result of joining in the expression of the applicability of that rule as presented by ARA, it follows that SGH/CAE are now also covered by the arguments contending that judicial admissions have been made by ARA that are and were a necessary condition of and for interpreting the "first-to-file" bar in a manner that ARA thought applicable.

As well, the defenses to ARA's submittal also apply to SGH/CAE. They are:

- a) The claim ARA had committed a judicial admission on the issue of RFCs filed with NIST constituting a public disclosure and thereby confirming "original source" status for plaintiff herein and for plaintiff Dr. Judy Wood in her case as well;
- b) Confirming that ARA had erred factually by not recognizing that plaintiff herein filed his RFC with NIST before Dr. Wood filed hers, thus confirming, in yet another way, that Dr. Reynolds, plaintiff herein, is an "original source."

By adopting ARA's position on the "first to file" bar, it is also clear that SGH/CAE should be deemed bound by ARA's said admission and by the articulation of how and in what manner those admissions can be said to have arisen as expressed in the Memorandum of Law in Opposition to Motion to Dismiss, Docket #91, filed by the undersigned counsel on January 28, 2008.

Respectfully submitted,

/s/
Jerry V. Leaphart

Dated: Danbury, CT
January 30, 2008

ELECTRONIC CERTIFICATE OF SERVICE

I hereby certify that on January 30, 2008, a copy of the foregoing notice of Replacement Affirmation was filed electronically and served by mail on anyone unable to accept electronic filing. Notice of this filing will be sent by email to all parties by operation of the Court's electronic filing system or by mail to anyone unable to accept electronic filing as indicated on the Notice of Electronic Filing. Parties may access this filing through the Court's CM/ECF System.

/s/ Jerry V. Leaphart
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